

**NOTICE**

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2014 IL App (4th) 140145-U

NO. 4-14-0145

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

June 25, 2014  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

In re: DERRICKA M., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Champaign County
v.	)	No. 12JD239
DERRICKA M.,	)	
Respondent-Appellant.	)	Honorable
	)	Harry E. Clem,
	)	Judge Presiding.

---

JUSTICE HOLDER WHITE delivered the judgment of the court.  
Justices Pope and Harris concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court reversed the trial court's judgment where the State failed to notify respondent's noncustodial father of the probation-revocation proceedings.

¶ 2 In January 2014, the State filed a petition to revoke the probation of respondent, Derricka M. (born October 9, 1998), alleging she committed two counts of domestic battery. Later that month, following a revocation hearing, the trial court found the State had proved one count of domestic battery by a preponderance of the evidence and revoked respondent's probation. In February 2014, the trial court resentenced respondent to an indeterminate term in the Department of Juvenile Justice (DOJJ).

¶ 3 Respondent appeals, arguing (1) her statutory and due process rights to parental notice were violated when the State failed to serve her father with notice of the proceedings, and (2) the trial court's failure to appoint a guardian *ad litem* (GAL) rendered the proceedings

fundamentally unfair. We reverse the trial court's judgment and remand for further proceedings.

¶ 4

## I. BACKGROUND

¶ 5 In November 2012, the State filed a petition for adjudication of delinquency and wardship, alleging respondent committed the offense of aggravated battery (720 ILCS 5/12-3.05(f)(1) (West 2012)). The petition alleged respondent committed a battery while using a deadly weapon, in that she stabbed her mother, Rachella Brown, with a knife.

¶ 6 During her November 26, 2012 detention hearing, respondent was accompanied by her mother and grandmother. Respondent's father, Derrick M., whose address was unknown, was not present. Respondent's mother informed the trial court respondent's father lived in Kentucky but maintained somewhat regular contact with respondent. Because respondent's father was involved in respondent's life, the court found respondent's father was entitled to notice of the proceedings. Upon learning respondent's mother possessed a phone number for respondent's father, the court directed respondent mother to obtain the father's address and provide it to the State, so summons could be issued to him. However, the record contains no indication respondent's father received summons or was otherwise notified of the proceedings.

¶ 7 Following the detention hearing, the trial court ordered respondent to be detained, finding (1) probable cause existed to justify her detention, and (2) detention was necessary for protection of respondent and the public. At a December 2012 status hearing, counsel indicated respondent would be admitting the allegations contained in the State's petition. After accepting the State's factual basis, the court accepted the minor's offer to admit the allegation contained in the State's petition. The court set the matter for sentencing and ordered a social investigation report to be prepared for consideration at the hearing. Thereafter, on respondent's motion, the court released respondent to the custody of her mother.

¶ 8 On January 7, 2013, the State filed a supplemental petition for adjudication of delinquency and wardship. The name of the respondent minor's father and his address were listed on the supplemental petition. The supplemental petition asserted respondent committed domestic battery (720 ILCS 5/12-3.2(a) (West 2012)), by pushing her mother in the chest. The minor was taken into custody and, due to court services' inability to reach the minor's mother, the minor's father, who was reached by telephone, provided verbal consents for medical treatment. That same day, following a hearing, respondent was ordered detained.

¶ 9 On January 14, 2013, respondent appeared for her sentencing hearing on the original petition. Following the hearing, the trial court sentenced respondent to 24 months' probation and 30 days in the Champaign County Detention Center with credit for 26 days served. The court ordered the 30-day term in the Champaign County Detention Center held in remission. On the State's motion, the court dismissed the supplemental petition for adjudication of delinquency and wardship.

¶ 10 In March 2013, the State filed a petition to revoke respondent's probation. The petition alleged since January 25, 2013, respondent had five unexcused absences, eight unexcused tardies, and two disciplinary referrals at school, in violation of the terms of her probation. The petition further alleged respondent failed to obey her mother's rules regarding curfew and, in February 2013, caused a physical altercation with her mother that resulted in her mother being treated at the emergency room.

¶ 11 On March 15, 2013, respondent appeared to answer the State's petition to revoke probation. The trial court set a hearing date on the petition to revoke probation and proceeded with a remission hearing. After hearing the parties' arguments, the court ordered respondent to serve the remaining 4 days of the 30-day term in the Champaign County Detention Center

previously held in remission.

¶ 12 At the April 2013 hearing on the State's petition to revoke probation, respondent offered to admit the allegations that she failed to follow her mother's rules and caused a physical altercation with her mother. The trial court accepted respondent's offer to admit and revoked her probation. The court thereafter set the matter for resentencing on May 15, 2013. In response to the State's request to detain respondent pending further proceedings, respondent's counsel stated she did not have a placement option for the minor and could not ask for her release. The court ordered respondent detained but authorized respondent's counsel to present placement alternatives to the court upon reasonable notice to the State.

¶ 13 Following the May 2013 resentencing hearing, the trial court ordered respondent committed to DOJJ for an indeterminate term, finding secure confinement was necessary and no less-restrictive alternatives were available. The court awarded respondent 63 days' credit against her sentence and set the matter for a review hearing.

¶ 14 On August 15, 2013, respondent appeared for the review hearing. Following the hearing, the trial court vacated its previous commitment order and resented respondent to 24 months' probation. The court set the matter for review on October 15, 2013.

¶ 15 On October 15, 2013, the State filed a petition to revoke respondent's probation. Therein, the State alleged respondent willingly violated the conditions of her probation by (1) having unexcused absences and a disciplinary referral at school, (2) not following through with services, and (3) not following curfew or abiding by her mother's rules.

¶ 16 At a November 12, 2013, hearing on the State's petition to revoke, respondent offered to admit the allegations that she had been absent from school without excuse and had not been following curfew or abiding by her mother's rules. After accepting the State's factual basis,

the trial court accepted respondent's admission, revoked her probation, and set the matter for resentencing on December 16, 2013.

¶ 17 Following the December 2013 resentencing hearing, the trial court resented respondent to a new term of 24 months' probation and set the matter for review on January 31, 2014.

¶ 18 On January 2, 2014, the State filed a petition to revoke respondent's probation. Therein, the State alleged respondent committed two counts of domestic battery (720 ILCS 5/12-3.2(a)(2) (West 2012)), asserting respondent (1) punched her mother, and (2) grabbed her 10-year-old brother by his neck. The petition lists respondent's father's address, but the record contains no indication respondent's father was served with summons or otherwise notified of the proceedings. That same day, the trial court detained respondent, finding detention necessary for the protection of the person or property of another.

¶ 19 On January 24, 2014, the cause proceeded to a hearing on the State's January 2014 petition to revoke respondent's probation. Respondent and her mother appeared, accompanied by respondent's grandfather. Respondent's mother testified on behalf of the State. Respondent testified on her own behalf. Following the testimony and argument of the parties, the trial court found the State had proved the allegations in the petition regarding respondent's mother but not her brother.

¶ 20 On February 24, 2014, the matter proceeded to resentencing. Respondent and her mother appeared and were accompanied by respondent's stepfather. After considering the parties' arguments and all relevant information, the trial court found respondent's "parents are unable for reasons other than financial circumstances alone to care for, protect, train, and discipline the minor, and the best interest of the public will not be served by placement under [section 5-740] of

the Juvenile Court Act." Further, the court found secure confinement was necessary because respondent was a danger to the public and herself and had failed to obey court orders. Based on these findings, the court resentenced respondent to an indeterminate term in DOJJ not to exceed five years or respondent's twenty-first birthday and awarded 211 days' credit against her sentence.

¶ 21 We note respondent's father was not present for any of these proceedings. The record contains no indication respondent's father was ever served with summons. The record is also devoid of any indication respondent's father was otherwise notified of these proceedings, despite the fact the State had his address.

¶ 22 This appeal followed.

## ¶ 23 II. ANALYSIS

¶ 24 On appeal, respondent argues her due process right to parental notice was violated when the State failed to provide notice of the proceedings to her father. Respondent contends the error requires this court to remand the cause for a new hearing on the State's petition to revoke probation. Alternatively, respondent argues the trial court's failure to appoint a GAL rendered the proceedings fundamentally unfair and requires this court to "vacate the judgments of the trial court, remand for further proceedings, and order the appointment of a GAL if no conflict-free parent is present to safeguard [respondent's] best interests."

### ¶ 25 A. Forfeiture and Plain-Error Rule

¶ 26 The record shows respondent failed to raise either issue in the trial court. As a result of this failure, she has forfeited review of both issues. *In re M.W.*, 232 Ill. 2d 408, 430, 905 N.E.2d 757, 772 (2009). However, we will review respondent's contentions if she demonstrates plain error. *Id.*, 905 N.E. 2d at 773. Pursuant to the plain-error doctrine, we must first determine whether the error complained of was clear or obvious. *Id.* at 431, 905 N.E.2d at 773. When the

error is clear or obvious, we will reverse only "(1) if 'the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant,' or (2) if the error is 'so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence.'" *Id.* (quoting *People v. Piatkowski*, 225 Ill. 2d 551, 565, 870 N.E.2d 403, 410-11 (2007)). Within this framework, we address respondent's arguments in turn.

¶ 27 B. Notice to Noncustodial Father

¶ 28 Respondent contends the State's failure to notify her noncustodial father of these proceedings violated her due process rights and, as a result, this court must vacate the trial court's orders revoking her probation and committing her to DOJJ. The question presented requires us to interpret provisions of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/1-1 to 7-1 (West 2012)), a task that requires *de novo* review. *People v. Easley*, 2014 IL 115581, ¶ 13, 7 N.E.3d 667.

¶ 29 1. *The State's Failure To Serve the Noncustodial Father Was Clear or Obvious Error*

¶ 30 The State concedes its failure to serve respondent's father with notice of the proceedings constituted clear or obvious error. After reviewing the record, we conclude the State's failure to notify respondent's noncustodial father of the proceedings was clear error and, therefore, we accept the State's concession.

¶ 31 In *In re Marcus W.*, 389 Ill. App. 3d 1113, 1123, 907 N.E.2d 949, 956 (2009), this court held the State's failure to provide notice to a corespondent parent with a known address constitutes clear or obvious error under plain-error analysis. In this case, at respondent's first appearance in November 2012, the trial court found respondent's father was entitled to notice of

the proceedings, given that he communicated with respondent on a somewhat regular basis. Although his address was initially unknown, the State listed respondent's father's address in its January 2013 supplemental petition for adjudication of delinquency and wardship. Further, the State's January 2014 petition to revoke probation included respondent's father as a party and listed his address. The record does not contain proof of service on respondent's father or otherwise indicate respondent's father was notified in writing of the date, time, and place of the hearing on the State's January 2014 petition to revoke probation, or any other proceedings in this matter. See 705 ILCS 405/5-530(1) (West 2012). Thus, the State's failure to serve notice on respondent's father constituted clear or obvious error.

¶ 32 *2. The State's Failure To Serve the Noncustodial  
Father Amounted to Plain Error*

¶ 33 Having found the State's failure to serve notice on respondent's father constituted clear or obvious error, the question becomes whether the error rises to the level of plain error. Respondent asserts that reversal is warranted under the second prong of plain-error analysis—the error was so fundamental it affected the fairness of the proceedings and challenged the integrity of the judicial process. Specifically, respondent argues because (1) her mother was the victim in the State's original petition, and (2) her mother and brother were the named victims in the petition to revoke at issue on this appeal, her mother had divided loyalties in this case and was not solely concerned with her best interests. Citing *Marcus W.*, 389 Ill. App. 3d at 1127, 907 N.E.2d at 960, respondent argues the absence of her father, which could have been cured had he been notified, deprived her of the presence of an adult concerned solely with her best interests and requires reversal. We agree with respondent.

¶ 34 In *Marcus W.*, this court reversed the revocation of the respondent's probation

where the State failed to provide notice of the probation-revocation proceedings to the respondent's parents and legal guardian. *Id.* at 1128, 907 N.E.2d at 961 In doing so, we found "[t]he lack of notice to either of respondent minor's parents or [his guardian] combined with the lack of participation by any of these individuals undermined the integrity of these juvenile-court proceedings," especially where the State argued, and the trial court considered, the lack of adult supervision in fashioning its sentence of commitment to DOJJ. *Id.* at 1126, 907 N.E.2d at 959. Further, we recognized the importance the supreme court "has placed on a minor having at least one person, besides an attorney or court-appointed guardian, present during juvenile proceedings *whose only loyalty and concern would be toward the minor*, even when the minor has little or no relationship with that individual." (Emphasis added.) *Id.* at 1127, 907 N.E.2d at 960.

¶ 35 In this case, the lack of notice to respondent's father undermined the integrity of the judicial process. Like the minor in *Marcus W.*, respondent was left facing serious adverse consequences, including commitment to DOJJ, without the presence of an adult concerned only with her best interests. While respondent's mother was receptive to helping her daughter throughout the earlier proceedings, she was the State's sole witness on the petition to revoke probation at issue. Respondent's mother and brother were the named victims in the January 2014 petition to revoke. Moreover, the record shows respondent's participation in juvenile court has been caused by an extremely volatile situation at home, in which respondent and her mother are constantly at odds. As a result of these circumstances, respondent's mother was left in the difficult and unusual position of balancing respondent's best interests against her own and could not adequately perform the role of a concerned parent. Because of the lack of notice to her father, respondent was deprived of the presence of an adult concerned only with her best interests.

¶ 36 The State contends respondent fails to persuade the proceedings would have been

any different had notice been given to her father because the trial court fashioned its sentence relying, in part, upon a finding that respondent's behavior was a danger to the public. The record does not support the State's contention. While the court did base its decision, in part, upon this finding in sentencing respondent to DOJJ, the court also based its decision upon a finding that respondent's parents were unable to care for, protect, train, and discipline respondent. Further, after the April 2013 hearing on the State's March 2013 petition to revoke probation, the State requested respondent be detained pending further proceedings, and respondent's counsel responded she could not ask for respondent's release because she had no placement options for her. Had the State given notice to respondent's father at any time throughout these proceedings, respondent's father could have appeared and demonstrated a willingness to care for, protect, train, and discipline respondent. Respondent was not afforded this opportunity, however, because the State failed to notify her father of the proceedings.

¶ 37 Moreover, the lack of notice to respondent's father subverted the goals of the Act. One of the purposes of the Act is "to preserve and strengthen the minor's family ties whenever possible, removing him or her from the custody of his or her parents only when his or her safety or welfare or the protection of the public cannot be adequately safeguarded without removal." 705 ILCS 405/1-2(1) (West 2012). Additionally, section 5-110 of the Act, which deals with parental responsibility in delinquency proceedings, states as follows:

"This Article recognizes the critical role families play in the rehabilitation of delinquent juveniles. Parents, guardians, and legal custodians shall participate in the assessment and treatment of juveniles by assisting the juvenile to recognize and accept responsibility for his or her delinquent behavior. The Court may

order the parents, guardian or legal custodian to take certain actions or to refrain from certain actions to serve public safety, to develop competency of the minor, and to promote accountability by the minor for his or her actions." 705 ILCS 405/5-110 (West 2012).

We note the above-referenced statutory language does not exclude noncustodial parents from its language and, in fact, a noncustodial parent must be served with notice of the proceedings, except in limited circumstances. 705 ILCS 405/5-525 (West 2012).

¶ 38 In this case, respondent's father was all but ignored by the trial court, the State, and counsel for respondent. After the court found respondent's father was entitled to notice of the proceedings, it should not have proceeded any further in this matter until respondent's father was served with process or notified by publication. However, no further mention of service or notice to respondent's father was made at any point throughout the pendency of this case. While respondent's mother actively participated throughout the proceedings, this does not excuse the lack of notice given to respondent's father, especially where the mother was the victim of respondent's delinquent behavior. As a consequence, respondent was deprived of the participation of one of her parents—one concerned only with her best interests—in the rehabilitative process. Accordingly, we reverse the court's judgment and remand the cause for further proceedings.

¶ 39 B. The Trial Court's Failure To Appoint a GAL

¶ 40 Because we find the State's failure to provide notice to respondent's father requires reversal as a matter of plain error, we need not address respondent's argument that the trial court's failure to appoint a GAL requires reversal. On remand, however, the trial court must consider whether the fact respondent's mother is (1) the named victim in this case, and (2) the State's sole witness on the petition to revoke probation requires, in the absence of a parent who is concerned

only with respondent's best interests, the appointment of a GAL. See 705 ILCS 405/5-610(1) (West 2012) (the trial court has discretion to "appoint a [GAL] for the minor when it finds that there may be a conflict of interest between the minor and his or her parent \*\*\* or that it is otherwise in the minor's interest to do so.").

¶ 41

### III. CONCLUSION

¶ 42

For the reasons stated, we reverse the trial court's judgment and remand for further proceedings.

¶ 43

Reversed and remanded.